

## EXHIBIT A

*Excerpts from Deposition of:* Kelly Kish, R.N.

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TENNESSEE

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DANIEL LOVELACE and  
HELEN LOVELACE, Individually  
and as Parents of BRETT  
LOVELACE, Deceased,

Plaintiff,

v.

Case Number 2:13-cv-02289

PEDIATRIC ANESTHESIOLOGISTS,  
P.A., BABU RAO PAIDIPALLI, and  
MARK P. CLEMONS,

Defendant.

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VIDEOTAPE DEPOSITION

OF

KELLY KISH

May 15, 2014

JILL W. HODGES, RPR, LCR #380  
P O BOX 381722  
Germantown, Tennessee 38138-1722  
(901) 335-7952

R I V E R S I D E    R E P O R T I N G

1 THE VIDEOGRAPHER: This is the  
2 video deposition of Kelly Kish taken by  
3 the defense in the matter of Lovelace  
4 versus Pediatric Anesthesiologists, et  
5 al, In The U.S. District Court For The  
6 Western District of Tennessee, Docket  
7 2:13-cv-02289.

8 This deposition is being held at  
9 the offices of Lewis Thomason in  
10 Memphis, Tennessee on May 15, 2014.  
11 We're on the record at 1:34.

12 Counsel, will you identify  
13 yourselves for the record, please?

14 MS. MAGEE: Marcy Magee. I  
15 represent Dr. Mark Clemons.

16 MR. GILMER: Brad Gilmer and Karen  
17 Koplon for Dr. Paidipalli.

18 MR. LEDBETTER: Mark Ledbetter for  
19 the Plaintiffs, the Lovelaces.

20 MR. TALLEY: Robert Talley for the  
21 deponent, Kelly Kish.

22 MR. LEDBETTER: I'd like to make a  
23 brief statement at the beginning of  
24 this, if I could.

1           This is Dr. Clemons deposition of  
2           Nurse Kish. I'd like to make and  
3           preserve two objections at this time;  
4           first, Dr. Clemons did not comply with  
5           the law in Tennessee and in this case on  
6           two accounts, properly filing a  
7           certificate of good faith within 30 days  
8           of pleading fault of a third party, a  
9           motion to strike is pending, which  
10          addresses the matters to be inquired on  
11          today with this witness as well as the  
12          affirmative defense that finds fault  
13          with this nurse for this event;  
14          second, Dr. Clemons failed to timely  
15          respond to Plaintiff's Request for  
16          Admissions early in this case served in  
17          July 2012, answering them in 2013, and  
18          has, therefore, foreclosed his denial of  
19          allegations of fault against him in this  
20          federal court case under Rule 36 of the  
21          Federal Rules of Civil Procedure. Under  
22          the Federal Rules, a failure to respond  
23          is an admission; no requirement exists  
24          to require the party submitting the

1 requests to, upon default, as here, move  
2 to have the factual matters admitted;  
3 thus, a general objection is made to  
4 this deposition and its contents,  
5 including its use by Dr. Clemons while  
6 reserving the right to ask questions,  
7 pending any rulings by the Court, the  
8 U.S. Magistrate Judge, on these points.  
9 Further, all other objections are  
10 reserved.

11 MS. MAGEE: On behalf of Dr.  
12 Clemons we take exception with your two  
13 objections and we'll address them at the  
14 appropriate time.

15 MR. GILMER: Otherwise, do we agree  
16 to the standard caption, all objections  
17 reserved except as to the form?

18 MR. LEDBETTER: Yes.

19 MS. MAGEE: Yes. This is a  
20 discovery deposition being taken  
21 pursuant to applicable Federal Rules of  
22 Civil Procedure.

23 I'd like to mark as Exhibit 1 the  
24 subpoena that was issued and served upon